

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

|                                 |   |                          |
|---------------------------------|---|--------------------------|
| CARL LANE,                      | ) |                          |
|                                 | ) |                          |
| Plaintiff,                      | ) | Civil Action No. 05-576  |
|                                 | ) |                          |
| v.                              | ) | Chief Judge Ambrose      |
|                                 | ) | Magistrate Judge Caiazza |
| RICHARD CULP AND R. WASHINGTON, | ) |                          |
|                                 | ) |                          |
| Defendants.                     | ) |                          |

MEMORANDUM ORDER

Carl Lane's ("Lane" or "the Plaintiff") Complaint filed pursuant to 42 U.S.C. §1983 was received by the Clerk of Court on May 3, 2005, and was referred to United States Magistrate Judge Francis X. Caiazza for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Plaintiff's claims are as follows: (1) conspiracy to retaliate against Lane for the exercise of his constitutional rights; (2) retaliation for the exercise of Lane's constitutional rights; (3) a violation of the Eighth Amendment; (4) a claimed denial of due process; and (5) a denial of equal protection of the laws. The Magistrate Judge's Report, filed on February 15, 2007, recommended that the Defendants' Motion for Summary Judgment be granted with respect to all of the Plaintiff's claims. More specifically,

it was recommended that the Defendants' Motion be granted with respect to the conspiracy and retaliation claims because Lane failed to present any admissible evidence from which a jury could find that the Defendants conspired to retaliate, or that they had any improper motive. The Eighth Amendment claim and Due Process claim were both found wanting because the allegations, even if accepted, do not rise to the level of a constitutional deprivation. And, finally, Lane's Equal Protection claim failed because he did not identify any other "similarly situated" inmate who was treated differently.

The parties were allowed ten days from the date of service to file objections. Objections were filed by the Plaintiff on March 8, 2007. The Objections are in the nature of a Declaration executed by inmate Kenneth Pagan in which he states that he did, indeed, conspire with the Defendants to retaliate against Lane due to the Plaintiff's having filed prior grievances against one or more of the Defendants. (Doc. 98). The Defendants have filed a Motion seeking to extend time to respond to the objections, (Doc. 99), asserting that the late production of this affidavit is suspicious, and that they wish to depose inmate Pagan.

First, the objections filed by Lane do not, in any fashion, challenge the proposed rulings with respect to his

Eighth Amendment, Due Process or Equal Protection claims. Thus, in this Memorandum Order the Report of the Magistrate Judge will be adopted to the extent that it recommends granting the Motion for Summary Judgment as to those claims.

Second, while the Defendants are entitled to depose inmate Pagan and test the veracity of the Declaration submitted by Lane, the fact is that it is, at this point, sufficient to permit Lane's conspiracy and retaliation claims to survive summary judgment. Thus, the Motion to Extend Time will be denied, and the recommendation that summary judgment be granted will not be adopted with respect to these claims. The Defendants may, however, file a new motion for summary judgment after completion of any further discovery they deem necessary. *but not later than 5/14/07.*

After de novo review of the pleadings and documents in the case, together with the Report and Recommendation and the Objections, the following ORDER is entered:

AND NOW, this 28<sup>th</sup> day of March, 2007,

IT IS HEREBY ORDERED that the Defendants' Motion for Summary Judgment (Doc. 64) is GRANTED with respect to the Plaintiff's Eighth Amendment, Due Process and Equal Protection claims, but is DENIED with respect to the Plaintiff's

Conspiracy and Retaliation claims.

The Report and Recommendation of Magistrate Judge Caiazza, (Doc. 94), dated February 15, 2007, is adopted as the opinion of the court with respect to the Plaintiff's Eighth Amendment, Due Process and Equal Protection claims only.

The Defendants' Motion to Extend Time to File Objections (Doc. 99) is DENIED - but without prejudice to the Defendants' right to file a new summary judgment motion on or before April 30, 2007.



s/Donetta Ambrose

Donetta Ambrose

Chief U.S. District Court Judge

cc:

Carl Lane, AS-1293

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